

of the Federal Government over the lives and activities of regular people.

Now, my office has recently heard from James Ramsey from Rush County, IN. James and his family farm corn, soybeans, and wheat in the east central part of our State. They have been farming and maintaining the same land since the 1860s. They also run a small business helping farmers and counties with drainage installation, ditch digging, and land clearing, improving water quality and soil health in the process.

They started out doing minor projects back in 2008 but have since grown, acquiring their own wheel trencher and commercial plow. Through hard work and through a lot of planning, James, his father, his brother, and others have expanded this business. They have clients now throughout the State of Indiana, and they have eight employees.

It is a real American success story—exactly the type WOTUS will interrupt. James, like many other farmers and small business owners across the country, knows what these newly revised, overly complex rules will accomplish. They will accomplish increased overhead, prolonged permitting processes, slowed or even stopped projects, and, ultimately, laid-off employees.

James has never had to let a single employee go because of a lack of demand. Instead, he regards his employees as family. They have their own families to feed. They have their own mortgages to pay, their own homes to heat. And James understands this.

This is why one of his greatest fears is having to one day—sometime soon, perhaps—walk into his shop and tell one of his guys that he can't keep everyone because of these new regulations. If this new definition of WOTUS stands, that has a strong chance of becoming reality. James might have to make that walk that he so wants to avoid.

Listen, our farmers don't want to clear the land or harm its creeks and streams. They want to take care of the soil—what they have been doing for generations. They want to continue to work hard on behalf of their families and ensure that they can continue in this noble profession that their fathers and grandfathers have been involved in. They want to pass this on to their children and grandchildren.

I have to say, our farmers also know quite a bit more about their land than the bureaucrats who wrote this WOTUS rule. As James pointed out, much of Indiana is not naturally drained. Because it was cleared long ago, rain empties into manmade streams and tile drains. We have the highest percentage of subsurface drainage in the entire nation in the State of Indiana.

Drainage systems are central to the productivity of our farms. Tangling them up with greater Federal regulation could be disaster for our agriculture industry. Farmers like James

have been through so much over the past few years. They have hung in there nonetheless.

Now, just when they think they have turned another corner, WOTUS resurfaces, and, as James said, there is a real fear that these new regulations will have an even greater long-term impact than the pandemic or supply chain crisis.

Right now, our farmers are asking for clarity, for an even-handed approach to regulation that, at once, respects the environment and allows them to continue to grow. If the Biden administration is serious, if they are genuinely serious about strengthening the economy, they will reverse course and give our farmers this clarity and certainty they so desire.

We should rescind this rule.  
I yield the floor.

### CLOTURE MOTION

The PRESIDING OFFICER. Pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will state.

The senior assistant legislative clerk read as follows:

#### CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the nomination of Executive Calendar No. 35, Jonathan James Canada Grey, of Michigan, to be United States District Judge for the Eastern District of Michigan.

Charles E. Schumer, Richard J. Durbin, Richard Blumenthal, Christopher A. Coons, Benjamin L. Cardin, Tina Smith, Christopher Murphy, Mazie Hirono, Tammy Baldwin, Margaret Wood Hassan, John W. Hickenlooper, Sheldon Whitehouse, Catherine Cortez Masto, Brian Schatz, Gary C. Peters, Alex Padilla, Michael F. Bennet.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the nomination of Jonathan James Canada Grey, of Michigan, to be United States District Judge for the Eastern District of Michigan, shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The senior assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from California (Mrs. FEINSTEIN), the Senator from Pennsylvania (Mr. FETTERMAN), and the Senator from Oregon (Mr. MERKLEY) are necessarily absent.

Mr. THUNE. The following Senator is necessarily absent: the Senator from Idaho (Mr. CRAPO).

The PRESIDING OFFICER (Ms. BALDWIN). Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 52, nays 44, as follows:

[Rollcall Vote No. 34 Ex.]

#### YEAS—52

Baldwin	Heinrich	Rosen
Bennet	Hickenlooper	Sanders
Blumenthal	Hirono	Schatz
Booker	Kaine	Schumer
Brown	Kelly	Shaheen
Cantwell	King	Sinema
Cardin	Klobuchar	Smith
Carper	Lujan	Stabenow
Casey	Manchin	Tester
Collins	Markey	Van Hollen
Coons	Menendez	Warner
Cortez Masto	Murkowski	Warnock
Duckworth	Murphy	Warren
Durbin	Murray	Welch
Gillibrand	Ossoff	Whitehouse
Graham	Padilla	Wyden
Grassley	Peters	
Hassan	Reed	

#### NAYS—44

Barrasso	Hagerty	Risch
Blackburn	Hawley	Romney
Boozman	Hoeben	Rounds
Braun	Hyde-Smith	Rubio
Britt	Johnson	Schmitt
Budd	Kennedy	Scott (FL)
Capito	Lankford	Scott (SC)
Cassidy	Lee	Sullivan
Cornyn	Lummis	Thune
Cotton	Marshall	Tillis
Cramer	McConnell	Tuberville
Cruz	Moran	Vance
Daines	Mullin	Wicker
Ernst	Paul	Young
Fischer	Ricketts	

#### NOT VOTING—4

Crapo	Fetterman
Feinstein	Merkley

The PRESIDING OFFICER. On this vote, the yeas are 52, the nays are 44.

The motion is agreed to.

### EXECUTIVE CALENDAR

The PRESIDING OFFICER. The clerk will report the nomination.

The senior assistant legislative clerk read the nomination of Jonathan James Canada Grey, of Michigan, to be United States District Judge for the Eastern District of Michigan.

### LEGISLATIVE SESSION

PROVIDING FOR CONGRESSIONAL DISAPPROVAL UNDER CHAPTER 8 OF TITLE 5, UNITED STATES CODE, OF THE RULE SUBMITTED BY THE DEPARTMENT OF LABOR RELATING TO "PRUDENCE AND LOYALTY IN SELECTING PLAN INVESTMENTS AND EXERCISING SHAREHOLDER RIGHTS"

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to legislative session and proceed to the immediate consideration of H.J. Res. 30, which the clerk will report.

The senior assistant legislative clerk read as follows:

A joint resolution (H.J. Res. 30) providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Department of Labor relating to "Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights".

The PRESIDING OFFICER. The senior Senator from Hawaii.

Mr. SCHATZ. Madam President, there is a group of elected officials in

our country today who are engaged in an anti-capitalist crusade. But they are not socialists; they are mostly congressional Republicans.

This CRA is gross government overreach on U.S. capital markets. It is designed to prevent pension plans from pursuing environmental, social, and governance—or ESG—investing. But make no mistake, it is only the latest step in a campaign to prevent American financial institutions from making money from the clean energy revolution, and it should offend anyone who supports free markets.

The reason this is happening is that the fossil fuel industry faces a risk wall, where the risks associated with climate change are clear enough that retirement plan sponsors may want to consider them when investing assets. The Trump administration banned them from doing so, implementing a rule that pension fund managers couldn't consider ESG investing. The Biden administration's rule merely reverses this ban, going back to a neutral stance—going back to be a neutral stance. It is not telling them to do environmental, social, and governance goals; it is just saying: Do whatever you want. It is none of our business. The Federal Government has no business in determining how pension funds deploy their resources.

But rather than own up to the risks or reduce their emissions, the fossil fuel industry is trying to remove climate-related elements from risk consideration, and the Republican Party is helping.

This closely coordinated effort is being driven by a network of dark money organizations fronting for climate denial groups. One attacker of ESG investing is the Rule of Law Defense Fund—the political arm of the Republican State Attorneys General Association, which urged people to come to the Capitol on January 6 and aid in the attempted overthrow of our democracy.

This dark money helps to win elections, and the fossil fuel industry is becoming more aggressive because of the increase in green investing. Right now, more than \$8 trillion in U.S. assets is under management employing sustainable investing strategies. ESG investing is expected to represent more than 20 percent of all global assets in the next 5 years, and this growth is occurring for one simple reason: It is profitable.

Some asset managers are pursuing sustainable investing at the behest of their clients. Others have determined sustainable investing fits a long-term strategy to grow retirement savings. Any plan sponsor considering sustainable investing is simply meeting the moment.

But here is the real point: It is their call. It is not our call. That is just capitalism in action, and the climate deniers are getting their butts kicked in the free market, and they are mad about it, and so they want to make a law to stop the bleeding.

Imagine an elected official telling an investment firm they can't offer large cap or small cap or emerging market funds or funds even that are exclusively for fossil energy. That would be preposterous. Why? Because people get to decide how to deploy their resources, and pension funds get to decide how to deploy their resources. But Republicans have decided that for this issue and only this issue, we should be telling pension fund managers how they can and can't invest.

The real reason for this is the Inflation Reduction Act has made it so profitable to invest in clean energy that they are losing, and they want an intervention from the Congress, so they decided to categorize ESG investing as something nefarious, as something tricky, as something woke. Come on. They are just losing. People don't want to invest in fossil fuel anymore, and so they are asking the Congress to intervene on their behalf.

This is not how the free market should work. If this passes, it will force financial firms to punish Americans on behalf of the fossil fuel industry. We cannot be intimidated. We have to reject this.

I yield the floor.

The PRESIDING OFFICER. The senior Senator from Massachusetts.

Ms. WARREN. Madam President, I rise today in opposition to Republican efforts to nullify the Department of Labor's rule that protects retirees and affirms decades of precedent. This rule allows those investing retirees' savings the freedom to direct those funds where the retirees want them to go. It lets them protect those funds from costly risks posed by worsening environmental disasters or unsafe and unfair working conditions and seek out promising, sustainable, long-term investment opportunities.

Republicans' latest front in their wholly made up culture war is an attack on "woke capitalism," and American retirees are apparently their targets. In particular, Republicans have set their sights on retirees who choose to invest their money with environmental, social, and governance—ESG—factors in mind.

Now, investors have actually been doing this for decades. The Department of Labor has repeatedly said that under the Employment Retirement Income Security Act of 1974, known as ERISA, retirement plan managers may consider all—all—relevant economic factors when making investment decisions if it is in the best interest of the plan's participants. That includes ESG factors, like how a company treats its workers or whether the company is sufficiently protected from climate risks and whether the company respects human rights.

It turns out, investors really want to know these things. You don't need to be a financial wizard to realize that whether a company invests in its workers or is vulnerable to climate risks might be relevant to the company's

long-term prospects and the potential returns on your investment.

But the Trump administration put blinders on investors when, in 2020, it finalized a rule limiting that and made it harder for retirees to invest with ESG considerations in mind. In 2022, the Biden administration Department of Labor rightfully removed these roadblocks and affirmed that retirement fiduciaries have the option to consider ESG factors when making investments on behalf of retirees.

Let's be very clear about what this rule does not do. It does not mandate anything. It does not require that fiduciaries invest or not invest in certain funds. It does not tell fiduciaries to consider or not to consider certain factors. There is nothing new here and certainly nothing extreme.

Let's be clear. By overturning the Department of Labor's rule, Republicans want to tie investors' hands and override the free market. This fight isn't about protecting and strengthening Americans' retirement security. It is not about ensuring that retirement plan fiduciaries are making sound financial investments. And it sure as heck is not about capitalism. It is politics, plain and simple.

How do I know that? Well, Republicans clearly believe that investment decisions should be made with consideration of ESG factors so long as they are ESG factors that the Republicans support. My colleague Senator RUBIO has championed legislation that would prevent Federal Government employees' retirement assets from being invested in Chinese and Russian companies.

At the same time, Republicans also seem to believe that government shouldn't restrict investors' ability to put their money wherever they want. In response to the Department of Labor's very sensible guidance warning about the financial risks of investing in crypto scams, my colleague Senator TUBERVILLE introduced a bill that would prohibit any guidance that would limit the type of investments that workers can make. He said:

The government has no business standing in the way of retirement savers who want to make their own investment choices.

So add up what the Republicans have already told us with the legislation they are sponsoring. Retirees should have the freedom to invest their hard-earned money in crypto scams, but they should not even be allowed to consider whether a company relies on child labor or is polluting the planet or is underpaying its workers when deciding whether or not an investment is sustainable. It just doesn't make any sense, and it is not supposed to.

There is a bigger picture here that Americans need to understand. Republicans know that President Biden will veto this resolution the minute it hits his desk. They know it won't succeed in nullifying the Department of Labor's rule. So what is the point of doing this?

Well, Republicans have been explicit that the goal of this exercise is to help their buddies in the courts. President Trump appointed judges across the country who are now engaged in a disturbing assault on the regulatory state and are hell-bent on kneecapping any effort to make markets fairer, to make workers safer, and to make the environment cleaner. This resolution is just one more attempt by Republicans to give an assist to these extremist judges and make it easier for the courts to overturn the rule and undermine the law.

Let's call this attack on the Department of Labor's rule what it really is—a wholly invented grievance to advance corporate special interests, not the interests of retirees.

Democrats need to stick together on this and reject these cynical efforts to undermine investor protection and empower extremist Republican courts.

I yield the floor.

The PRESIDING OFFICER. The junior Senator from Minnesota.

Ms. SMITH. Madam President, I appreciate my colleagues' remarks today. You know, the issue that we are debating is whether or not retirement plans should be allowed to consider a company's environmental, social, and governance goals when they make investments. That is ESG, and it is pretty simple.

My colleagues and I say that people who make investments for retirement accounts and pensions plans may—they don't have to; they may—consider ESG in their decisions about what stocks to buy so long, of course, as they adhere to their principal fiduciary responsibility, which is to put the financial best interests of their clients first.

Now, on the other hand, our Republican colleagues are saying: No, retirement plans can't consider ESG goals. They are somehow claiming that this rule will undermine free and fair markets—undermine the free market and promote “woke” capitalism. And, if you can tell me what that means, then I will look forward to your explanation.

So let's figure out what this is really about.

People invest their life savings for a safe, secure retirement, and a lot of people want those investments in companies that reflect their values, companies that protect the safety of their workers, that have excellent ethics rules in place, guarding against conflicts of interest; companies that are committed to protecting the environment and managing the risks of climate change. In fact, companies with these kinds of positive environmental, social, and governance policies are often good financial investments as well. The two go hand in hand.

The foundation of a free market is that people can decide for themselves where to invest their money, and they should have good, trustworthy information in order to make those decisions so that the market is fair and they don't get taken advantage of.

That is all this ESG rule that we are defending today does. It asserts that investors should have the option, if they choose, to make ESG investments. It is not a mandate. It does not elevate one type of investment over another. All this rule does is allow workplace retirement plans to offer ESG investments as an option to people who want them, provided, of course, that those investments are prudent and provide a safe and secure retirement.

So I can tell you that out in the real world of Minnesota, this is no big deal. For decades, great Minnesota companies have been looking for excellent returns on their investments. That is their job. But they have also been trying to improve how their companies help their community, help their employees, and help the environment. A lot of people would say that is good business.

In fact, ESG investing has been growing in this country for decades. People like it. They want to invest in companies that reflect their values. More than \$18 trillion are held in investment funds that follow the ESG investment principle. So this isn't some sort of weird fly-by-night new idea. ESG investing has been routine for years.

But what is new—what is new—is the way in which these extreme Republican politicians whom we see today are trying to turn ESG into their latest tool to rip us apart and to expand their own political power, and that is so hypocritical.

You know, Republicans claim to be believers in a free market and freedom of choice, but, today, with this vote, they are saying you can't even think about basic concerns like protecting the environment and fighting climate change or protecting workers or strong company ethics. You can't even think about those things as you make investments for your retirement. So instead of allowing people to make their own choices about how to invest in their retirement savings, these Republican politicians want to put their political values and the interests of their donors in the middle of your investment decisions.

That is just wrong. It is out of touch, and I don't think it flies—not in Minnesota and not in most places in this country.

So I hope we can reject this extreme agenda and vote no. This issue is just too important. It is about letting people decide how to secure their own retirement and allowing them to choose investment options that match their values.

To be clear, there are good reasons that people would want to take ESG factors into consideration. It is reasonable to ask whether your retirement is invested in companies that operate sustainably and practice good governance. It is reasonable to say that you don't want to invest in a company with a record of discrimination or mistreating workers.

You know, I have been in business, and I can tell you that these values

aren't just good for marketing or investor relations. They are the markers of a healthy, sustainable business—businesses with the capacity to confront risk, to innovate, to diversify, and to meet the needs and challenges of an evolving world for long-term resilience and viability. Businesses that consider these factors do better. It is good business. They make more money.

So, colleagues, I ask for a “no” vote, which is a “yes” vote for allowing people the freedom to invest their retirement in ways that reflect their values and make money. I also ask my colleagues to join me in my legislation, the Freedom to Invest in a Sustainable Future Act, which would put into law this commonsense rule that we are voting on today.

I commend the Department of Labor for their commonsense rule that we have been talking about, which doesn't force choices. It creates choices.

Let's defeat this resolution and allow people to choose how they want to plan for the future for themselves.

I yield the floor.

The PRESIDING OFFICER. The senior Senator from Delaware.

Mr. CARPER. Before the Senator from Minnesota leaves the floor, I want to say I could not agree with you more.

My dad used to talk to my sister and me about common sense. He would say: Just use some common sense.

Thank you for appealing to our better judgment and common sense. Thanks a lot.

Madam President, I rise today to talk for a few minutes about three letters—ESG—and, as Aretha Franklin might say, to find out what it means to me.

Now, as my staff knows, I am not a fan of acronyms or jargon. ESG is a shorthand description for a form of investing that takes into account environmental, social, and governance factors. It means very little to the average American worker. So let me try to make this simple and real for them.

Millions of American workers are saving for retirement or are already withdrawing from a retirement plan, thanks to their employer-sponsored retirement plan, like a 401(k). Each paycheck, hard-working Americans do their best, even when times are tight, to put money away for their future and the future of their children and grandchildren with the hope that, down the road, those weekly or monthly contributions will grow over time and help folks retire with dignity well into their golden years. And with some good fortune and a prudent investment strategy, retirement accounts can also provide certainty and security so that Americans can enjoy their retirement—to take the vacation that you and your spouse always wanted, to make a charitable donation, or maybe to send their grandchild to college.

Those retirement savings often grow thanks to something called a fiduciary, who manages American workers' retirement money. There is a Federal law

called the Employee Retirement Income Security Act, or ERISA, that first passed in 1974 but has been amended many times to ensure that fiduciaries are doing right by American workers.

When decisions are made on behalf of an individual investor, I don't think it is controversial to say that every American wants their money to grow as much as is reasonably possible. In order to make the best decision for Americans' hard-earned retirement savings, I also don't think it is controversial to say that the Federal Government shouldn't be dictating investment decisions. It shouldn't.

While the previous administration actually blocked fiduciaries from considering economic factors such as climate risk, I believe that is the wrong approach. The Trump administration's unpredictable and uneven rulemaking led to confusion in the business community and uncertainty for investors.

Now, let's be clear. A range of economic factors, including climate change, can impact investment returns and thus fiduciaries' investment decisions. The reality is that concerns about our environment—that is the "E"—and about the social impact of corporate activities—that is the "S"—and the corporate governance structure of companies are all highly relevant factors in assessing returns on investments in these companies. That is the "G."

So I am pleased. I am pleased that the Biden administration has embraced more of a free market approach, as my friend from New York, the majority leader, outlined, I think, in today's Wall Street Journal.

Further, this rule reflects what successful marketplace investors already know: There is an extensive body of evidence that ESG factors could impact markets, could impact industries and companies.

I know that many of our colleagues are concerned about the "E" in ESG. I am too. As chairman of the Senate Committee on Environment and Public Works, I know we can't ignore the "E" in ESG. The economic risks from climate change are real and they are significant, and fiduciaries must be allowed—allowed—to consider whether those costs may well lower their returns of an investment or not. Unfortunately, our colleagues' efforts to nullify the current Department of Labor's ESG rule threatens the principles-based process that has worked well for nearly 50 years.

We should be making it easier—not harder, easier—for investors to evaluate the sustainability commitment from our corporations who want to do what is good for business and for our planet, this planet we call home.

With that, I call on our colleagues to join me and many others in opposing the CRA before us today.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mrs. MURRAY. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. MURRAY. Madam President, I will be honest. Based on the arguments I have been hearing, I am not sure everyone who is opposing the Biden administration's ESG rule has actually read the policy. Some of the arguments for the resolution overturning this rule simply don't add up. In fact, they are a contradiction. ESG investing is simply the practice of taking into account the environmental, social, and governance practices of companies that you invest in.

For instance, just as a hypothetical, if you are against investing in so-called "woke" causes, you are actually laying out your own ESG criteria. Here is the thing: The Biden administration rule would allow that. They would allow that because—and this is an important point, I think, folks are missing—the Biden rule is fundamentally neutral on how ESG factors are taken into consideration, so long as the investment fund is meeting its fiduciary obligations to its beneficiaries.

I am not sure anyone gets that because the fact of the matter is that some of the same people who are railing against this rule and against ESG investing have advocated for positions that essentially are ESG investing.

When Republicans push for legislation to protect local and State governments that divest from companies based on their policies toward Israel, that is a form of ESG investing. It is also worth noting, if you manage a retirement plan for a faith-based organization and you want to make sure you are investing in accordance with your client's faith, that, too, would be ESG investing. When we call for divesting from foreign adversaries due to human rights and national security concerns, again, we are actually talking about ESG investing.

If anyone wants to argue that that is different, that it is a matter of national security, I will note there is no question that climate change is also a really serious national security issue, but that is, honesty, beside the point here.

Let me say it again: The rule we are talking about is neutral—neutral—on whether a fiduciary is considering these factors from a particular perspective. This rule is not about saying the left's or the right's taking on a given environmental, social, or governance issue is correct. It is about acknowledging that these factors are reasonable for asset managers to consider. It is about risk mitigation to safeguard retirement plan savers' nest eggs. It is about letting asset managers do their jobs without the government getting in the way. That shouldn't be controversial. It, actually, should be common sense.

I mean, think about it. When it comes to environmental factors, shouldn't financial advisers have the freedom to consider environmental practices when climate disasters cost trillions of dollars a year?

Shouldn't they have the freedom to take into account whether a company is adopting sustainable practices that reduce its costs and consumption or if it is moving to clean energy so that it makes it less reliant on foreign oil?

When it comes to social factors, we live in a diverse nation. That is part of what makes our country so vibrant and so strong. Shouldn't financial advisers have the freedom to consider whether companies are doing the most to tap into that strength?

Shouldn't they have the freedom to account for whether companies are well situated to serve and speak to the broadest range of people or to grow by reaching communities that are currently underrepresented in their customer base?

When it comes to how companies are governed, we are facing workforce shortages today. Companies are having huge challenges in finding and retaining workers. So shouldn't financial advisers have the freedom to consider how well companies are paying their workers or how seriously they take safety and issues like workplace harassment or what sort of benefits they might provide to retain workers, like childcare, paid leave, or more?

These are concrete factors that have huge implications for companies' bottom lines. So why wouldn't we give advisers the freedom to consider them?

Why do Republicans want to tie their hands and meddle in the free market by reversing this balanced, neutral rule?

Despite the misunderstandings and misrepresentations and despite how badly some of my colleagues seem to be missing the point, at the end of the day, this is actually pretty simple. Financial security is about planning for the future, and you can't plan for the future if you aren't allowed to consider the environmental or social or governance factors that are shaping it.

So I urge my colleagues, today, to join me in voting against this resolution.

I yield the floor.

The PRESIDING OFFICER. The junior Senator from Rhode Island.

Mr. WHITEHOUSE. Madam President, I was delayed in joining my colleagues here to talk about this so-called anti-woke capitalism, or anti-ESG scheme, that has been propagated.

I think the important thing to begin with is to understand what is happening out there, why this has happened. The Republicans would like us to believe that some bizarre, viral epidemic of wokeism has spread into America's great financial companies, into the investment advisers, into the banks, into all kinds of fiduciaries, and that that needs to be somehow excised. That is not what has happened. That is preposterous, magical thinking.

What has happened is that the long forecasted dangers of climate change that scientists have been telling us about for years have now gotten so real and are so immediate that they have hit the due diligence horizon for big banks, big investment companies, corporate boards, and other fiduciaries. When you owe somebody else a fiduciary duty, like your shareholders or your investors or your customers at a bank, then you have to tell them the truth, and you have to tell them the truth about risks. The risks associated with climate change—the risks caused by the fossil fuel industry's relentless emissions—are now so real and so immediate that they can't be denied by big institutions that have no real interest in climate change but are absolutely obliged to tell the truth as fiduciaries.

So that fiduciary threshold—that due diligence horizon—has been crossed, and the fossil fuel industry, which is used to bullying to get its way, is now pushing this completely fake, anti-ESG effort in order to try to undo what the free market and what real life in facts and fiduciary obligations are causing other industries to deal with.

The one telltale clue here is that, when they are done talking about woke capitalism and when they are done talking about anti-ESG stuff, when you actually look at what the objection is—what the specific thing is that they are pushing back against—in the ESG, it is always the “E.” It is never the “S.” It is never the “G.” It is not social stuff. It is not governance stuff. It is environmental stuff. Within that “E,” for environmental stuff, it is “E” for emissions. That is always the gravamen of the complaint.

So that tells you a lot about who is behind this, and who is pitching it tells you a lot about who is behind this because you have got fossil fuel-funded organizations, like the Republican Attorneys General Association that is cranking up and turning out Republican attorneys general to push this theory. You have got the Republican State treasurers, often funded by the fossil fuel industry, and a group called the State Financial Officers Foundation, which has glommed the State treasurers together to try to push on this. You have got State boards, like the Texas Railroad Commission—again, heavily, heavily, heavily involved with the fossil fuel industry—that are pushing all of this.

When you look at what it is, you can see that its target is always fossil fuel emissions, and you can see that its proponents are always fossil fuel funded. That tells you why we are where we are.

The rule that the fossil fuel industry pushed through during the Trump administration—an administration which did essentially everything the fossil fuel industry wanted it to do—would have restricted the ability of investment professionals to deliver the products that customers actually wanted

and prevented them from looking at environmental risks, social issues, or governance. Again, this is really about the environmental piece. The Biden rule just undoes that.

Nobody has to do ESG stuff, as that is dictated by customer demand, but if you want to and if your customers are demanding that and if you want to protect them from climate risk, well, there you go. You have to do it.

Another clue about the mischief here is who some of the propagators of this theory have been. One is the Heritage Foundation. The Heritage Foundation is a notorious climate denial group. It has received millions of dollars from the Koch brothers' political enterprise, from Koch foundations, and has plenty of fossil fuel ties. There is the Texas Public Policy Foundation, which is another group that is a front group for the oil and gas industry. I have already mentioned RAGA, which is heavily fossil fuel funded. It helped produce Scott Pruitt, whom you may remember from EPA disgrace. They had such control over RAGA that they were able to get him, as the attorney general, to write a letter with the identical text from a fossil fuel company, send it in to the EPA under his own letterhead, under his own signature as attorney general, even though the entire text was written by a fossil fuel company.

So that is the kind of relationship it has with RAGA, which, by the way, also helped turn people out for the January 6 insurrection. It is a really, really high-quality operation there.

The last group that I will mention is the Marble Freedom Trust. The Marble Freedom Trust is the 501(c)(4) pop-up operation that magically appeared in Utah to be the recipient of a \$1.6 billion slush fund, gifted to it by a far-right billionaire. That put it into the hands of a guy named Leonard Leo, whom I have talked about here on the floor before, who is the orchestrator of the scheme to capture the Supreme Court and put it into special interests' hands. His reward for his success in that project was this \$1.6 billion slush fund that he now controls, and he controls it through that Utah 501(c)(4) pop-up called the Marble Freedom Trust.

The guy who delivered that money into the Marble Freedom Trust was also famous for his support for the Heartland Institute, which is really just an epic climate denial crowd, to the point where one of their more notorious acts was to put up a billboard equating climate scientists to the Unabomber. That is the quality of the debate about climate change that the Heartland Institute brought, and the billionaire who has teed up the Marble Freedom Trust was a prime backer of all of that and, indeed, had his CFO go on the board of the Heartland Institute to try to keep the thing afloat so that it could be moderately well managed and continue to do its great work of billboards that compared the climate scientists to the Unabomber.

So that is where we are. These guys are deep into this anti-ESG push. The

dark money operation that I talk about on the floor all the time is behind this ESG thing just the way it is behind the capture of the Court and just the way it is behind the whole climate denial operation that has stymied progress on climate in this building.

A few billion dollars here and there in politics turns out to deliver a lot, and the fossil fuel industry desperately wants to stop people who have fiduciary obligations from telling the truth about climate risks to their clients—to the people whom they have that fiduciary risk to—and this is the pitch to do that so that there is a legal hook to stop people from meeting their fiduciary obligations by disclosing real-life, actual climate risk now that it is so clear and so immediate that it is now obliged to be disclosed for due diligence.

Let us vote no on H.J. Res. 30, and let's do more than that. Let's call this out as a phony op. This is a scheme, run by the fossil fuel industry, to try to solve the problem it has—that its emissions problems are now so real that fiduciaries have to address it. That is the problem. A fake operation funded by billions of dollars of dark money through all of these slimy corporations and entities that doesn't disclose who their real donors are and through all of these political operatives that get their funding from the fossil fuel industry—that is not something we want to encourage in this country. We have had enough of the public not being listened to. In this case, actual customers, actual clients, are not being listened to because of this pressure.

Let's call this out. Let's put an end to it. This is not healthy. There is something rotten in Denmark.

With that, I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. WARNER. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WARNER. Madam President, I rise today in joining my other colleagues, organized by my friend the Senator from Hawaii, to ask my colleagues to vote against the resolution, which I think we will be taking up literally in the next 10 minutes, which would strip away a commonsense Department of Labor rule that simply provides fiduciaries—remember who we are talking about: fiduciaries, people who are responsible, under ERISA plans, to think about their beneficiaries over the long term. We are trying to make sure that those fiduciaries who are charged with maintaining retirement plans have the ability to adequately account for environmental, social, and governance factors.

I know some of my colleagues have come on the floor and said this is an

attempt by the Department of Labor to somehow mandate the retirement investments of hard-working Americans. Nothing could be further from the truth. The truth is, we look at profit and loss, we look at cash reserves, and we look at financial accounting. But the idea that environmental, social, and governance factors can't even be looked at is an interference in the business cycle that really kind of goes beyond the pale.

I am often regarded—I have to acknowledge this—in my caucus as sometimes being a Member who has the most experience with capitalism, the most experience with business. I absolutely believe in our system. There is nothing better. But the idea that today—and I don't want to copy some of the comments that have been made, but the idea that today, a lot of folks who have never been able to read a balance sheet are going to come in and tell paid fiduciaries what they can consider or what they can't consider in terms of the long-term economic returns for their beneficiaries—I wonder if things have gotten a little topsyturvy here.

I can imagine if some people were saying “Well, we need to make sure we have this rule in place” or “Overrule this rule” or “Put this binding in place” if you are talking about day traders or if you are talking about a hedge fund that only looks at the next quarter's results—the kind of short-term capitalism that too often, I think, is eating at the core of our great system. But if we are going to look at long-term returns, we ought to take and have to take into consideration factors—in many cases, factors that may not have been as relevant 30, 50, 70 years ago. Some are going to say we can't look at those.

Unfortunately, my colleagues across the aisle have decided to take away a useful term, a useful set of analyses, something that has been asked for by these pension funds, by these beneficiaries, and instead try to turn it into a political issue.

Let me recall back 75 years ago. If you look at the Fortune 500 and the companies that were involved in that Fortune 500, about roughly 75 to 80 percent of those companies' assets were tangible assets. What does that mean? It means it was their plant. It was their equipment. It was their machinery.

Fast-forward—and a lot of this is due to great innovation in the technology field—and those same Fortune 500 companies are dramatically different than the companies named 60, 70 years ago. If you look at their balance sheets today, 75, 80 percent of their assets are intangible assets. What are intangible assets? Intangible assets are things like intellectual property, and that is coming about from a healthy workforce. But more than anything else, it is the men and women who work at these firms. Virtually every CEO I have heard from in the last 10 years has said: My biggest asset is my workforce.

The idea that somehow—because ESG is not just E; it is also S, and that falls into workforce—the idea that somehow a pension fund can't look at workforce retention, workforce quality, workforce characteristics as a measure of what they want to invest in, to me, is a little whacky.

Let me actually call on a reference sort person, whom I hope my colleagues on the other side of the aisle will acknowledge, and that was President Trump's Chairman of the SEC, the Securities and Exchange Commission, Jay Clayton, whom I had a very good working relationship with. He said that human capital disclosures can and should inform investment decisions.

Chair Clayton said:

Our current disclosure requirements date back to a time when companies relied significantly on plant, property, and equipment to drive value. Today, human capital represents an essential driver of performance for many companies albeit in different ways.

So under Mr. Trump's SEC, there was a rulemaking process that started to make sure that human capital components can be an appropriate focus of reviews, particularly for companies and entities that want to invest for the long term.

I am concerned that this approach we are taking today might indirectly preclude those fiduciaries who represent pension funds, long-term investors—they are no longer going to be able to actually look at this critical criteria around human capital.

The other thing is, the Department of Labor rule—and I know a lot of my colleagues have spoken to this and talk about: Well, what about the environment? I think we all would recognize or most of us would recognize the fact that climate change is real and poses a rapidly growing threat to the long-term feasibility of investments made on behalf of hard-working Americans.

While this Department of Labor rule won't direct our Armed Forces, I think it is really important to understand that the FFRDCs, the federally funded research and development corporations—the RANDs, the MITREs, the CNA, which does naval work analysis, federally funded—if we are going to apply these same kinds of Department of Labor prohibitions on our Armed Forces, we couldn't allow the CNA to look at the long-term effects on the Navy—and I don't want to give away a secret here, but they have been looking at this issue for over 20 years—that they couldn't make those kinds of predictions about what effect sea level rise would have on our Navy.

I tell you, we are blessed in the Commonwealth of Virginia to have the world's largest Navy base, in Norfolk, and I can assure you, virtually every year or every other year, we have to raise the piers, literally spend hundreds of millions of dollars to raise the piers to make sure that Navy base can still be utilized.

So if it is a smart enough, good enough requirement that the Navy and

our Armed Forces are looking at the E of ESG, why would we preclude the private sector from doing that?

I think the Department of Labor's rule on ESG is both practical and necessary. I think those funds that chose not to abide by it, that is their right. That is what capitalism is all about—making choices. But the notion that we are going to somehow come in and impose requirements on the market and take away long-term investors' ability to consider human capital, to consider the effects of climate change, and I have not even touched—I know we are going to have to go to a vote—on issues around corporate governance, all which can lead to, longer term, better returns. If this was a rule about day traders and quarter-to-quarter hedge fund folks, I might get it. But in terms of protecting the long-term value creation in long-term sustainable capitalism, I think this effort today sadly misses the mark and will do a great deal of damage.

I urge my colleagues, when the vote comes, to vote against the CRA.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. SCHUMER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. MURPHY). Without objection, it is so ordered.

H.J. RES. 30

Mr. SCHUMER. Mr. President, I have to admit I come to the floor sort of confounded. For a long time, my Republican friends prided themselves—prided themselves—for being the party of free markets, the party of small government, the party opposed to injecting political ideology into the decisions of private investors and managers and companies. But apparently all that was talk because, today, our Republican friends are making an effort to limit free market choice and inject hard-right ideology into private sector decision making. Republicans are attempting to force corporations and managers, against their will, to turn back the clock 50 years, even if it means getting a lower return on investment—even if it means getting a lower return on investment.

Now, the facts here are not difficult. The Department of Labor recently introduced a rule recognizing that retirement fiduciaries may consider ESG factors when making investment decisions. The Republican proposal, meanwhile, wants to undo that rule, and, across the country, Republican State legislators are trying to punish managers who dare consider, on their own volition, ESG.

Note, Mr. President, that I said “may”—not “must”—when describing the rule because the rule that the DOL has put in effect is completely optional. Let me repeat that. The DOL



rule is completely optional while the Republican measure is a mandate. In fact, the current rule goes out of its way to make sure that decision making remains solely in the hands of the fiduciary. Nothing changes the fact that investment decisions must be shown to be prudent above all else.

Now, the hard right has made a lot of noise trying to make ESG their dirty little acronym. They say this is about wokeness, that this is a cult, that it is some grave intrusion into finance. It is the same predictable, uncreative, unproductive attacks they use for anything they don't like.

But this isn't about ideological preference. ESG is about looking at the biggest picture possible so the investors can make decisions that decrease risk while increasing returns. In fact, more than 90 percent of S&P companies already publish ESG reports today. So none of this is new. It has been a long-established practice, one that Republicans suddenly say they don't like and want to forbid.

But why shouldn't managers evaluate the risks posed by an increasingly volatile climate if they deem it helps them get a return on their investment? Why shouldn't they consider the consequences of an aging population or other trends that could impact their portfolio? And even a better question is this: Why are Republicans going out of their way to prohibit investors from making the best possible choices as they manage their funds? Why are Republicans trying to forbid investors from considering climate and other factors if they believe it would help them get a better return?

The bottom line is this: The present rule gives investment managers an option. The Republican rule, on the other hand, ties investors' hands. Republicans talk about their love of the free market, small government, letting the private sector do its work, but their obsession with eliminating ESG would do the opposite, forcing their own views down the throats of every company and investor. The Republican amendment, again, would force their own views down the throats of every company and investor.

You know what we say on this side? Let the market work. If that naturally leads to consideration of ESG factors, then Republicans should practice what they have long preached and get out of the way.

I thank my Democratic colleagues who are joining us in opposition to this measure.

I yield the floor and call the question.

The PRESIDING OFFICER. The clerk will read the title of the joint resolution for a third time.

The joint resolution was ordered to a third reading and was read the third time.

VOTE ON H.J. RES. 30

The PRESIDING OFFICER. The joint resolution having been read the third time, the question is, Shall the joint resolution pass?

Mr. BRAUN. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from California (Mrs. FEINSTEIN), the Senator from Pennsylvania (Mr. FETTERMAN), and the Senator from Oregon (Mr. MERKLEY) are necessarily absent.

Mr. THUNE. The following Senator is necessarily absent: the Senator from Idaho (Mr. CRAPO).

The result was announced—yeas 50, nays 46, as follows:

[Rollcall Vote No. 35 Leg.]

#### YEAS—50

Barrasso	Grassley	Ricketts
Blackburn	Hagerty	Risch
Boozman	Hawley	Romney
Braun	Hoeven	Rounds
Britt	Hyde-Smith	Rubio
Budd	Johnson	Schmitt
Capito	Kennedy	Scott (FL)
Cassidy	Lankford	Scott (SC)
Collins	Lee	Sullivan
Cornyn	Lummis	Tester
Cotton	Manchin	Thune
Cramer	Marshall	Tillis
Cruz	McConnell	Tuberville
Daines	Moran	Vance
Ernst	Mullin	Wicker
Fischer	Murkowski	Young
Graham	Paul	

#### NAYS—46

Baldwin	Hickenlooper	Sanders
Bennet	Hirono	Schatz
Blumenthal	Kaine	Schumer
Booker	Kelly	Shaheen
Brown	King	Sinema
Cantwell	Klobuchar	Smith
Cardin	Lujan	Stabenow
Carper	Markey	Van Hollen
Casey	Menendez	Warner
Coons	Murphy	Warnock
Cortez Masto	Murray	Warren
Duckworth	Ossoff	Welch
Durbin	Padilla	Whitehouse
Gillibrand	Peters	Wyden
Hassan	Reed	
Heinrich	Rosen	

#### NOT VOTING—4

Crapo	Fetterman
Feinstein	Merkley

The joint resolution (H.J. Res. 30) was passed.

#### EXECUTIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will resume executive session.

#### CLOTURE MOTION

The PRESIDING OFFICER. Pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will state.

The senior assistant legislative clerk read as follows:

#### CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the nomination of Executive Calendar No. 39, James Edward Simmons, Jr., of California, to be United States District Judge for the Southern District of California.

Charles E. Schumer, Richard J. Durbin, Jeff Merkley, Jeanne Shaheen, Elizabeth Warren, Sheldon Whitehouse, Richard Blumenthal, Christopher A. Coons, Jack Reed, Alex Padilla, Gary C. Peters, Angus S. King, Jr., Mazie Hirono, Tim Kaine, Brian Schatz, Cory A. Booker.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the nomination of James Edward Simmons, Jr., of California, to be United States District Judge for the Southern District of California, shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The senior assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from California (Mrs. FEINSTEIN), the Senator from Pennsylvania (Mr. FETTERMAN), and the Senator from Oregon (Mr. MERKLEY) are necessarily absent.

Mr. THUNE. The following Senator is necessarily absent: the Senator from Idaho (Mr. CRAPO).

The yeas and nays resulted—yeas 51, nays 45, as follows:

[Rollcall Vote No. 36 Ex.]

#### YEAS—51

Baldwin	Heinrich	Rosen
Bennet	Hickenlooper	Sanders
Blumenthal	Hirono	Schatz
Booker	Kaine	Schumer
Brown	Kelly	Shaheen
Cantwell	King	Sinema
Cardin	Klobuchar	Smith
Carper	Lujan	Stabenow
Casey	Manchin	Tester
Collins	Markey	Tillis
Coons	Menendez	Van Hollen
Cortez Masto	Murphy	Warner
Duckworth	Murray	Warnock
Durbin	Ossoff	Warren
Gillibrand	Padilla	Welch
Graham	Peters	Whitehouse
Hassan	Reed	Wyden

#### NAYS—45

Barrasso	Grassley	Paul
Blackburn	Hagerty	Ricketts
Boozman	Hawley	Risch
Braun	Hoeven	Romney
Britt	Hyde-Smith	Rounds
Budd	Johnson	Rubio
Capito	Kennedy	Schmitt
Cassidy	Lankford	Scott (FL)
Cornyn	Lee	Scott (SC)
Cotton	Lummis	Sullivan
Cramer	Marshall	Thune
Cruz	McConnell	Tuberville
Daines	Moran	Vance
Ernst	Mullin	Wicker
Fischer	Murkowski	Young

#### NOT VOTING—4

Crapo	Fetterman
Feinstein	Merkley

The PRESIDING OFFICER (Ms. CORTEZ MASTO). On this vote, the yeas are 51, the nays are 45.

The motion is agreed to.

#### EXECUTIVE CALENDAR

The PRESIDING OFFICER. The clerk will report the nomination.

The legislative clerk read the nomination of James Edward Simmons, Jr., of California, to be United States District Judge for the Southern District of California.